IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 23RD AUGUST 2007 / 1ST BHADRA 1929

Crl.MC.No. 2692 of 2007()

AGAINST THE ORDER DATED 05/07/2007 IN CMP 555/2007 IN STC.4094/2007 of JUDL. MAGISTRATE OF FIRST CLASS-II(MOBILE), KOZHIKODE

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PETITIONER: 2ND ACCUSED

K.M.ELLIAS, S/O. P.T.KOYATTY,
AGED 37 YEARS, RESIDING AT KOYAMARAKKARAKAM HOUSE, MUCHUNDY, KUTTICHIRA, KOZHIKODE-1.

BY ADV. SRI.V.N.RAMESAN NAMBISAN

RESPONDENTS: RESPONDENTS

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1. MESSRS. GENERAL TRADING COMPANY,
A PARTNERSHIP FIRM, REPRESENTED BY ITS MANAGING PARTNER, C.MOIDEEN KOYA, S/O. LATE HAJI C.MOHAMMEDKUTTY, DOOR NO.9/1170 B, K.K.ROAD, BIG BAZAR, KOZHIKODE.

2. STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 23/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

Crl.M.C.No.2692 of 2007

Dated this the 23rd day of August 2007

O R D E R

The petitioner is the second accused in a prosecution under Section 138 of the Negotiable Instruments Act. The trial has started. Defence evidence was also adduced. The learned Magistrate, at that stage, realise the need to bring on the array the person who had signed the cheque as also some other partners. Invoking the powers under Section 319 Cr.P.C, the learned Magistrate has issued process against those accused who are to be arrayed.

2. The petitioner, and not those persons sought to be arrayed, have come before this court with this petition under Section 482 Cr.P.C. On the face of it, the petitioner's grievance does not appear to be justified at all. Those persons, sought to be arrayed, having not raised any complaint, the petitioner cannot be heard to complain on their behalf. At any rate, powers under Section 482 Cr.P.C cannot and need not be invoked at the instance of the petitioner on behalf of some other persons.

3. The learned counsel for the petitioner then raises a contention that the complainant, in his evidence, has asserted that the petitioner was the one who had issued a cheque. The learned Magistrate has arrayed the other accused inter alia on the ground that the signature appearing in the cheque appears to be that of one

of the accused who has been arrayed. That appears to have been the specific case of the petitioner himself also. The petitioner contends that in as much as the complainant had initially a case that the petitioner had handed over the cheque, such shift in stand cannot be permitted. I find no merit in this contention also. On the evidence that is adduced - whether it be the prosecution evidence, defence evidence or the evidence of the court witnesses, the powers under Section 319 Cr.P.C can be invoked. I find no merit in the grievance raised that but for the evidence adduced by the accused there would not have been any occasion to invoke the jurisdiction under Section 319 Cr.P.C. The language of Section 319 makes it clear that powers under Section 319 Cr.P.C can be invoked if there is evidence justifying such course.

4. I do not, in these circumstances, find any reason to invoke the jurisdiction under Section 482 Cr.P.C. This petition is in these circumstances dismissed. I may hasten to observe that the dismissal of this petition will not in any way fetter the rights of the petitioner or those others who have been arrayed under Section 319 Cr.P.C to raise all necessary, appropriate and relevant contentions before the learned Magistrate.

(R.BASANT, JUDGE)

jsr

// True Copy// PA to Judge

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007